

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**MOTION BY UNITED STATES FOR AUTHORIZATION TO USE
ALTERNATIVE NOTICE PROCEDURES FOR VICTIMS**

The United States of America, by and through its undersigned attorney, respectfully requests authorization to use alternative notice procedures for the large number of actual and potential victims in the instant case.

The Justice for All Act of 2004 (“the Act”), codified at 18 U.S.C. § 3771, was signed into law on October 30, 2004. The Act provides certain rights to victims in federal criminal proceedings. Among these rights are the right to “reasonable, accurate, and timely notice” of public court proceedings. 18 U.S.C. § 3771(a). The Act defines a crime victim as “a person directly and proximately harmed as a result of the commission of a Federal offense ...” 18 U.S.C. § 3771(e). Importantly, the Act recognizes that for crimes involving multiple victims, the Court has discretion to adopt procedures that will not unduly interfere with the criminal proceedings. Thus, 18 U.S.C. § 3771(d)(2) provides:

[i]n a case where the Court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the Court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

There are three broad classes of victims in the present case. First, there are those corporations whose computer networks were compromised by the defendant and his co-conspirators. Second, as charges were made to debit and credit cards stolen from corporate victims, the financial loss was primarily passed through to, and borne by, hundreds of issuing banks. Tens of millions of payment and debit cards were stolen during the course of the conspiracy. Third, in some instances, individuals whose payment cards were stolen and fraudulently used suffered financial or other harm that was not, or could not be, passed through to the bank that issued their credit/debit cards.

The government does not seek a complete waiver of the notice provision of the Act. Rather, the United States proposes that the Court authorize that notification be made to victims in the following manner:

- a. Department of Justice Victim Notification System: The government has begun utilizing and will continue to utilize that Victim Notification System (VNS) to notify the currently identified five corporate victims affected by this crime. The VNS enables the government to inform victims entered in the system of scheduled court dates and significant court event outcomes.
- b. Website: The government has placed links on its website (www.usdoj.gov/usao/ma) to provide public information regarding this case, and provide resources for victims of identify theft. The charges, case status, and victim impact statement form are on the website. The website contains a toll-free number to the U.S. Attorney's Office (1-888-221-6023) that potential victims may call to listen to a recorded message providing the case status, and instructions

on how to directly contact the U.S. Attorney's Office Victim Assistance staff by phone for further information. It also provides an email address (usama.victimimpact@usdoj.gov) for the return of victim impact information.

In this case, the number of crime victims is extraordinarily large, and as noted above, it is impracticable to identify and provide reasonable, accurate, timely, and individualized notice to all of them. The procedure described above is a reasonable one that will give effect to the Act without unduly complicating or prolonging the proceedings.

WHEREFORE, the United States respectfully requests that the Court authorize the government to enact the proposed plan for notifying victims of this crime, and that the Court find that the proposed plan is a reasonable procedure to satisfy the government's obligations under 18 U.S.C. § 3771.

Respectfully submitted,
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United States Attorney

By: /s/ Stephen P. Heymann
STEPHEN P. HEYMANN
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Stephen P. Heymann
STEPHEN P. HEYMANN
Assistant U. S. Attorney

Date: December 23, 2009